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Via CM/ECF

Office of the Clerk
U.S. Court of Appeals for the Eighth Circuit
Thomas F. Eagleton Courthouse
111 South 10th St., Room 24.329
St. Louis, Missouri 63102

Re: United States v. Brad Wendt - No. 24-2458: FRAP 28(j) Notice

To the Office of the Clerk:

Appellant Bradley Eugene Wendt, through the undersigned counsel, respectfully submits this Federal Rule of Appellate Procedure 28(j) letter notifying the Court of the recent decision in *United States v. Justin Bryce Brown*, Case No. 3:23-CR-123-CWR-ASH (S.D. Miss. filed Jan. 29, 2025) (“*Brown*”). This supplemental authority supports Argument section II(B), pages 39-43, of Appellant’s Brief.

In *Brown*, the defendant was charged with knowingly possessing a machinegun in violation of 18 U.S.C. §§ 922(o) and 924(a)(2). The Southern District of Mississippi dismissed the case against the defendant, finding that § 922(o) was unconstitutional as applied to the defendant. The court analyzed the constitutionality of § 922(o) by assessing the historical tradition as mandated by *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022).

Applying the directive from *Bruen* that there is a “historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons,’” the *Brown* court concluded that the government failed to meet its burden to show that machine guns are both dangerous *and* unusual. *Brown*, at 9. Specifically, the government failed to argue how machineguns were unusual when there were “more than 740,000 machineguns lawfully possessed in the United States in 2021.” *Brown*, at 7. Accordingly, the *Brown* court sustained the defendant’s as applied challenge and dismissed the case against him.

Appellant Bradley Eugene Wendt respectfully requests the Court take into consideration the supplemental authority submitted herein, supporting Argument section II(B), pages 39-43, of Appellant's Brief.

Sincerely,

/s/ Nicholas A. Klinefeldt

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